

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CIV 4700

-----X Case No.

DERRELL SMITH

Plaintiff,

-against-

MIDLAND CREDIT MANAGEMENT, INC.

Defendant.  
-----X



Plaintiff, by and through his attorneys, FAGENSON & PUGLISI, upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

INTRODUCTION

1. This is an action for damages brought by an individual consumer and on behalf of a class for defendant's violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq* which prohibits debt collectors from engaging in abusive, deceptive and unfair acts and practices.

PARTIES

2. Plaintiff is a natural person residing in this District and is a consumer as defined by the FDCPA, § 1692a(3).

3. Upon information and belief, defendant is a debt collector, as defined pursuant to 15 U.S.C. § 1692a (6), with its principal place of business in California.

#### JURISDICTION AND VENUE

4. This Court has jurisdiction and venue pursuant to 15 U.S.C. § 1692k(d) (FDCPA) and 28 U.S.C. § 1331.

#### AS AND FOR A FIRST CAUSE OF ACTION

5. Plaintiff re-alleges paragraphs 1 to 4 as if fully re-stated herein.

6. That on or about December 20, 2007 the defendant sent a collection letter to the plaintiff in an attempt to collect an alleged debt incurred for personal purposes to Providian. A copy of said letter is attached as Exhibit "1". On information and belief, defendant purchased the alleged delinquent debt, and commenced collection thereof in or about November 2007. On information and belief, defendant commenced reporting the alleged delinquent debt to credit reporting agency, Experian, in or about November 2007.

7. That Plaintiff contacted his attorney, Concetta Puglisi, Esq., regarding the said letter from defendant, and on January 18, 2008 and January 22, 2008 Ms. Puglisi wrote to the defendant advising that plaintiff disputes the debt defendant was attempting to collect. In addition, Ms. Puglisi's letters requested that defendant delete or correct any negative entry which may have been reported to any credit reporting agency in accordance with the Fair Credit Reporting Act. Copies of said letters are attached as Exhibit "2".

8. That plaintiff obtained a copy of his Experian credit report dated February 29, 2008. Said credit report discloses that defendant continued to report the debt in February 2008. Said credit report discloses that defendant failed to report that the debt is disputed by the plaintiff.

9. That, on information and belief, as late as April 23, 2008, defendant had failed to report to Experian that the debt is disputed by plaintiff.

10. That defendant has failed to delete the negative entry on plaintiff's credit report. Further, defendant has failed to place a notation on plaintiff's credit file with Experian that the debt is disputed as required to be done by the FDCPA. Defendant has thus violated the FDCPA, including but not limited to, §1692e(8) by communicating credit information which is known or should be known to be false, including the failure to communicate that a disputed debt is disputed.

11. That defendant is also in violation of the FDCPA, §1692d, as the natural consequence of the aforesaid conduct of defendant is to harass, oppress or abuse the plaintiff in connection with the collection of the alleged debt.

12. That, further, defendant's said attempt to collect the debt is in violation of the FDCPA, §1692e(10), and constitutes a false representation or deceptive means to collect or attempt to collect a debt.

AS AND FOR A SECOND CAUSE OF ACTION

13. Plaintiff re-alleges paragraphs 1-12 as if fully re-stated herein.

14. That defendant's said attempt to collect the debt is also in violation of the FDCPA, §1692e(2)(A), in that defendant has made a false representation of the character and legal status of the debt by failing to report that it is disputed.

AS AND FOR A THIRD CAUSE OF ACTION

15. Plaintiff re-alleges paragraphs 1-14 as if fully re-stated herein.

16. That by reason of the defendant's aforesaid violations of the FDCPA the plaintiff was confused and suffered stress, anxiety and emotional distress.



WHEREFORE, plaintiff respectfully prays that judgment be entered against the defendant as follows:

- (a) statutory damages pursuant to 15 U.S.C. § 1692k in an amount to be determined at the time of trial;
- (b) reasonable attorney's fees, costs and disbursements pursuant to 15 U.S.C. § 1692k ; and
- (c) for such other and further relief as may be just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff requests trial by jury on all issues so triable.

Dated: New York, New York  
May 12, 2008.

  
\_\_\_\_\_  
NOVLETTE R. KIDD, ESQ. (NK2552)  
FAGENSON & PUGLISI  
Attorneys for Plaintiff  
450 Seventh Avenue, Suite 3302  
New York, New York 10123  
Telephone: (212)268-2128  
fnplaw@aol.com

**EXHIBIT "1"**



PO Box 1259  
Oaks, PA 19456



12-20-2007

#BWNHLTH  
#0000 0852 5157 2278#  
DERRELL E SMITH  
2773 UNIVERSITY AVE APT 1  
BRONX, NY 10468-2603

1651 4813

## Settlement Opportunity

Contact Information: Tel (800) 282-2644

Hours of Operation: M-Th 6am - 7pm; Fri 6am - 5pm;

Sat 6am - Noon PST

Current Owner: Midland Funding LLC

Original Creditor: PROVIDIAN

Original Account No.: 5189131011689390

MCM Account No.: 8525157227

Current Balance: \$5,390.58

Payment Due Date: 01-19-2008

Dear DERRELL E SMITH,

You won't want to miss this settlement opportunity offered to you by Midland Credit Management, Inc., servicer of the above-referenced account.

Recognizing that you may have gone through some financial difficulty and have been unable to satisfy your account, we would like to offer you a **positive and flexible option** to resolve your account for 40% off the Current Balance.

**If we receive payment by 01-19-2008 in the amount of  
\$3,234.35, we will consider the account balance paid in full!**

**CALL NOW!** To take advantage of this opportunity, please contact us **TOLL-FREE** at (800) 282-2644 and any of our Account Managers will be able to assist you.

**MAIL!** You may prefer to settle your Current Balance by using the Acceptance Certificate below. Simply detach the form and enclose it with your \$3,234.35 payment in the envelope provided. In order to be sure the payment is received by 01-19-2008, please mail no later than 01-14-2008.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Sincerely,  
Customer Service Representative

*Please tear off and return lower portion with payment in envelope provided*

### Acceptance Certificate

DERRELL E SMITH  
2773 UNIVERSITY AVE APT 1  
BRONX, NY 10468-2603

MCM Account Number: 8525157227

Current Balance: \$5,390.58

**Amount Due: \$3,234.35**Make Check Payable to: Midland Credit  
Management, Inc.

Payment Due Date: 01-19-2008



Midland Credit Management, Inc.  
Department 8870  
Los Angeles, CA 90084-8870



12 8525157227 8 0323435 011908 4

**EXHIBIT "2"**

FAGENSON & PUGLISI  
Attorneys at Law  
450 Seventh Avenue, Suite 3302  
New York, NY 10123  
(212)268-2128

Lawrence M. Fagenson  
Concetta Puglisi  
Novlette Kidd  
Casmir Sondey

(212)268-2127-fax  
January 18, 2008

Midland Credit Management  
Department 8870  
Los Angeles, CA 90084-8870

Debtor: Derrell E. Smith  
Original Creditor: Providian  
Account #: 5189131011689390  
MCM Account #:8525157227

Dear Sir/Madam:

Please be advised that Fagenson & Puglisi represents Derrell E. Smith. Derrell Smith disputes the debt you are attempting to collect.

Please provide this office with documentation supporting your claim and your New York City Department of Consumer Affairs license number. Do not contact our client directly. Delete or correct any negative entry which you may be reporting to the credit reporting agencies in accordance with the Fair Credit Reporting Act.

Should you have any questions please contact the undersigned.

Very truly yours,  
FAGENSON & PUGLISI

  
CONCETTA PUGLISI

CP/mp  
cc: Derrell Smith



FAGENSON & PUGLISI  
Attorneys at Law  
450 Seventh Avenue, Suite 3302  
New York, NY 10123  
(212)268-2128

Lawrence M. Fagenson  
Concetta Puglisi  
Novlette Kidd  
Casmir Sondey

(212)268-2127-fax  
January 22, 2008

Midland Credit Management  
Dept. 12421  
PO Box 1259  
Oaks, PA 19456

Debtor: Derrell E. Smith  
Original Creditor: Providian  
Account #: 5189131011689390  
MCM Account #:8525157227

Dear Sir/Madam:

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FAGENSON & PUGLISI



CONCETTA PUGLISI

CP/mp  
cc: Derrell Smith